(Testimony of Abraham Moncharsh.)

or there came to your attention during the period April 24th until May 13th any complaint of any kind, character or description from any steamship company in relation to delivery of merchandise between April 24th and May 13th, and you answered, 'I do not ever remember a complaint from a steamship company with the exception of the William S. [3873] Clark,' and I take it that you mean by that that the complaint that came to you from the officer of the American President Lines in regard to the Clark was the only complaint that you received, or that came to your attendtion in regard to eggs or produce delivered for the War Shipping Administration boat; is that right?")

Mr. Faulkner: My objection, your Honor, is that the testimony of the witness is that he meant by that answer, he said in the record——

Mr. Pratt: If the Court please——

The Court: The court is prepared to rule. Let us proceed orderly. Objection overruled. He may answer.

Mr. Faulkner: Exception.

The Witness: A. That is correct. This came direct to me.

Mr. Pratt: Or came to your attention.

A. Yes.

Q. No other complaint ever came to your attention, is that right?

A. As far as I can remember, yes.

Q. That is to say, any complaint relating to the

(Testimony of Abraham Monchar, Jr.)

delivery of eggs or other produce to the ships of the War Shipping Administration; is that right?

A. That is right.

Q. Didn't you receive a complaint in connection with the eggs that were delivered on the steamship Josiah Royce? A. No, sir.

Q. Didn't Mr. Berman or Mr. Goddard report to you that a complaint was made about the size of the eggs delivered on that ship?

A. I never knew anything about it; never knew anything [3874] about the order until I came here to this court.

Q. Didn't there come to your attention a complaint in regard to eggs delivered on the steamship Edward Base, a ship owned or controlled by the War Shipping Administration?

A. I never even heard of the name of that boat.

Q. You never heard of the name of that boat?

A. No, sir.

Q. Handing you a letter, a carbon copy of a letter addressed to Nye & Nissen, dated June 30, 1943, and signed by the Hammond Shipping Company as agent for the United States of America, War Shipping Administration, will you look at that letter and see if that matter ever came to your attention?

A. This is the first time I have ever seen a copy.

Q. The first time you have ever seen it?

A. Ever seen it.

Q. That letter was addressed to the attention of Mr. Berman, I notice, by the——

(Testimony of Abraham Moncharsh.)

Mr. Faulkner: May I see it?

Mr. Pratt: (Continuing): ——by the heading of the letter.

Mr. Faulkner: Before you inquire into the letter, may I examine it?

Mr. Pratt: Yes.

Q. Didn't Mr. Berman bring this letter to your attention? A. No, sir.

Q. He did not? May this be marked for identification, please?

(The letter referred to was marked U. S. Exhibit 179 for identification.) [3875]

Mr. Pratt: Q. I now show you another letter, this one dated September 15, 1943, on the same subject, relating to the steamship Edward Base, addressed to Nye & Nissen, Attention Mr. Berman. Will you look at this letter?

A. This is the first time I ever seen it.

Q. You never saw it. Do I understand that Mr. Berman did not call to your attention this letter of September 15th, or the letter of June 30th, both from the Hammond Shipping Company, representing the War Shipping Administration?

A. That is correct.

Q. You say this is the first time you have ever seen either of these letters?

A. That is correct.

Mr. Pratt: May this letter be marked for identification, please?

(The document was marked U. S. Exhibit 180 for Identification.)

(Testimony of Abraham Monclarsh.)

Mr. Pratt: I now show you another letter which I will ask be marked for identification.

The Clerk: 181 for Identification.

(The document was marked U. S. Exhibit 181 for Identification.)

Mr. Pratt: Q. This is dated September 16, the day following the last letter, and I will ask if you ever saw that letter, this letter being addressed to the Hammond Shipping Company?

A. Yes, I wrote this letter. [3876]

Q. You wrote that letter——

The Witness: Just a minute. I wrote the letter. I had never saw these other two letters before I wrote this letter.

Mr. Faulkner: Before the witness is interrogated about the letter may I see it, your Honor?

Mr. Pratt: He is making an answer.

Mr. Faulkner: Pardon me.

Mr. Pratt: I think he is making an answer that is not responsive to any question.

Mr. Faulkner: I know, but the practice is to show the exhibit first——

Mr. Pratt: I apologize for not having shown it to you.

Mr. Faulkner: All right.

The Witness: I wrote this letter after I had a conversation with Mr. Berman. In other words, Mr. Berman told me about—I can't remember exactly what he told me, but he had a little difficulty with a customer and that his recommendation

(Testimony of Abraham Moncharsh.)

would be to give him a credit of—a credit memorandum of 5 cases of eggs.

Mr. Pratt: As a matter of fact, did you see these other exhibits, Exhibits 179 and 180 for Identification, did you not? A. No.

Q. Don't you say in the first paragraph of your letter to the Hammond Shipping Company, 417 Montgomery Street, San Francisco, California, Attention Mr. Paul Babcock—— [3877]

"Dear Mr. Babcock:

Your letters of June 30th and September 15th were turned over to me this morning to be answered."

A. Well, my stenographer will usually put that heading in.

Q. The reference is that first paragraph is to these letters, Exhibits 179 and 180 for Identification.

A. She is referring to these letters, yes.

Q. You are referring to them, are you not?

A. No.

Q. Didn't you dictate this letter?

A. I wouldn't—I would never dictate ——

Q. Did you dictate this letter, answer?

A. Most of it, yes.

Q. Well, which part did you not dictate?

A. I probably did not dictate "Attention: Mr. Paul Babcock," "Dear Mr. Babcock," and I probably did not dictate, "Your letters of June 30th and September 15".

(Testimony of Abraham Monchar sh.)

Q. You letter relates entirely——

A. I probably gave him a resume of how eggs are candled, right from here on.

Q. You gave him that?

A. In each case, in this particular letter.

Q. You mean you dictated that to the girl?

A. Yes.

Q. You say you did not have the letters before you that are referred to in the first paragraph?

A. That is correct.

Q. The whole letter is in response to these two letters of June 30th and September 15th, isn't it?

A. It refers to these letters, yes.

Q. It is in answer to this letter, isn't it?

A. That is correct, [3878] and the girl put that heading in.

Mr. Pratt: I offer in evidence, if the Court please, Exhibits 179, 180 and 181 for Identification.

Mr. Faulkner: Which ones are you offering?

Mr. Pratt: Three of them.

Mr. Faulkner: 179, 180 and 181?

Mr. Pratt: Yes.

Mr. Faulkner: We object to them on the ground it is not proper cross-examination. In that connection I wish to point out to the court that in the development of the direct examination of the witness he testified in connection with the series of invoices involved here that he had received no complaint from any of the shipping companies; in connection with that, that clearly appears in the record, and on cross-examination he was asked

(Testimony of Abraham Moncharsh)

about other complaints and the answers are in, and now in relation to the answers that had no relation to direct examination an effort is made to impeach the witness. I understand the rule is that on a collateral matter they are bound by the answer.

The Court: The objection will have to be overruled.

Mr. Faulkner: Exception. I object to it as not proper cross-examination.

(U. S. Exhibits 179, 180 and 181 for Identification were thereupon received in evidence.)

Mr. Pratt: I would like to read these to the jury if [2879] the Court please. "June 30, 1943

"Nye & Nissen,
1301 17th St.,
San Francisco, California.

Attention: Mr. Berman.

Subject: Rotten Eggs—SS Edward Bates.

On March 13, 1943, we purchased from you 45 cases of processed eggs for the subject vessel.

We received a report from the chief steward which I would like to quote in part for your information.

April 4—Eggs are not good enough. Eggs do not hold together, and it is almost impossible to serve straight up.

May 3—One case dumped today. Some had embryonic chickens inside.

May 11—Eggs are still being dumped. Every other one rotten.

(Testimony of Abraham Monchbarsh.)

May 19—2nd cook broke 20 eggs this morning obtaining one good one.

May 24—Will have to dump remainder of eggs (10 cases) before reaching port; all were rotten.

You will note from the above that the eggs were reported practically unfit for use only 20 days after receiving same. It is apparent from the above steward's report that we received a shipment of spoiled eggs and as a consequence the ship had to make the last two or three weeks of its voyage without any eggs whatsoever.

The results are obvious, that is, the cooks were unable to do any pastry baking and many types of menus [3880] were impossible to make.

Our investigation develops that out of the total of 45 cases of eggs purchased, at a cost of $587.25, we were only able to use 15 cases. We, therefore, request a refund from you of the value of 30 cases viz. $391.50. Please give this matter your immediate attention.

Yours very truly,
UNITED STATES OF AMERICA,
WAR SHIPPING ADMINISTRATION.
By HAMMOND SHIPPING CO., LTD."

That was June 30, 1943.

The next letter is September 15, 1943, and reads:

(Testimony of Abraham Moncharsh.)

"Nye & Nissen,
1301 17th St.,
San Francisco, California.

Attention: Mr. Berman.

Subject: Rotten Eggs—SS Edward Bates.

Gentlemen:

On June 30th, we wrote you reference the spoilage of 30 cases of eggs delivered by your Company to the subject vessel on March 13, 1943. To date we have received no advice from you regarding the settlement of this claim.

Will you kindly acknowledge receipt of this letter and also what information you have received from your Chicago office reference this shipment.

Yours very truly,
UNITED STATES OF AMERICA,
WAR SHIPPING ADMINISTRATION,
By HAMMOND SHIPPING COMPANY,
(As Agents Only)."

The third of these exhibits, 181, is on the letterhead of Nye & Nissen, Inc., 1301 17th Street, San Francisco, Calif., September 16, 1943:

(Testimony of Abraham Moncharsh.)

"Hammond Shipping Co.,
417 Montgomery Street,
San Francisco, California.

Atten: Mr. Paul Babcock.

Dear Mr. Babcock:

"Your letters of June 30th and September 15th were turned over to me this morning to be answered.

Since you have quite an elaborate statement in regard to these eggs in your letter date June 30th which you received from your Mr. Bates, I would like to explain to you how eggs are handled through a packing plant.

Each case of eggs is very carefully candled and various grades are made and the grade is marked on each case. At the time when these eggs are candled the egg candlers, or the person supervising the egg candlers, does not know where these eggs are going. They candle eggs all day long. The shipping clerk then fills his orders from the various grades. Mistakes could happen. The egg candler may put the wrong egg or two into the wrong case. However, if the egg candler was off in candling a great deal, the supervising candler would catch that promptly. Furthermore, the person that nails up the cases could also make a mistake and put the wrong [3882] case into the wrong pile. Mistakes could happen where you handle the human element.

However, we have never received a serious complaint like your Mr. Bates has outlined to you. For an example, he states that on 'April 4th—Eggs are

(Testimony of Abraham Moncharsh.)

not good enough. Eggs do not hold together, and it is almost impossible to serve straight up." I presume he means 'sunny-side-up'. That could happen when eggs are kept in a warm place or when eggs are kept in a hot kitchen before they are used. Furthermore, when breaking an egg for 'sunny-side-up' you have got to be very careful otherwise the yolk will start to run. Eggs of such character could certainly be used for scrambling or cooking.

For your confidential information, in eggs that we receive direct from the farmers we very seldom find any more than one or two bad eggs to the case, so you can, therefore, see even if the eggs that were delivered to you were never candled, you would not find over one or two bad eggs to the case. On the other hand, something must have happened to the shipment of eggs made to you on March 13th.

I can honestly tell you that we have checked into this very thoroughly and we can find no reason whatsoever for such serious complaint.

However, I am enclosing herewith a credit memorandum for 5 cases of eggs and hope that this will be satisfactory [3883] to you.

Yours very truly,

NYE AND NISSEN, INC.,

By A. MONCHARSH."

and written by pen is "A. Moncharsh," and then in type.

(Testimony of Abraham Moncharsh.)

Q. That is your signature, is it not, Mr. Moncharsh? A. That is correct.

Q. Now, I want to direct your attention to another letter, dated September 20, 1943. I will ask that this letter be marked for identification.

(The document was marked U. S. Exhibit 182 for Identification.)

Mr. Pratt: Q. This is another letter from Hammond Shipping Company, for the United States, and addressed to the attention of Mr. A. Moncharsh, and in reply to the letter which I just read. Do you identify that?

A. This letter was addressed to me.

Q. Did it come to your attention?

A. I wouldn't remember.

Q. You don't remember. I offer this letter in evidence, if the Court please, as Exhibit 182. [3884]

The Court: Let it be admitted and marked.

Mr. Faulkner: I object to it as not proper cross examination, if the Court please, and upon the same grounds heretofore stated. In other words, here is a transaction relating to eggs that were in a chill box on a ship for a period of a couple of months, and it does not relate to the quality at the time of delivery. It is part of their case in chief if they had made any complain of these eggs.

The Court: The objection is overruled.

Mr. Faulkner: Exception.

(The document was thereupon received in evidence and marked U. S. Exhibit 182.)

(Testimony of Abraham Moncharsh)

Mr. Pratt: This dated September 20, 1943, four days after the date of the last previous letter from Mr. Moncharsh:

"Nye & Nissen, Inc.,
1301 17th St.,
San Francisco, Calif.

"Attn: Mr. A. Moncharsh.

"Subject: Spoiled Eggs—SS Edward Bates.

"Gentlemen:

"This will acknowledge receipt of your letter of September 16th which was in answer to our letter of June 30th. We request that you again refer to our letter of June 30th, with particular reference to reports from the chief steward, dated May 3, 11, 19 and 24th. [3885]

"Your letter above referred to, was apparently written without careful consideration of our claim. We do not desire to enter into any discussion of the methods used in packing eggs, etc. Neither have we asked you questions as to the origin of these eggs, the date they were received by you and put in storage, what happened to them after they were put in storage, etc.

"We are explaining to you that the eggs received by us were unfit for human consumption. Further, we wish to call your attention to the fact that these eggs were sold to the United States Government, and that we, as General Agents for the United States Government, cannot pay for merchandise unfit for human consumption.

(Testimony of Abraham Moncharsh.)

"Upon receipt of the eggs by us, they were placed in ship's chill box. The eggs were received by us on March 13 and you will note, that the report of the chief steward covers dates in the month of May. Eggs on the ship were not taken out of the cooler for use except in small quantities as required. We request that you give our claim your further consideration promptly.

"Very truly yours,

"UNITED STATES OF AMERICA,

"WAR SHIPPING ADMINISTRATION,

By HAMMOND SHIPPING CO., LTD.,

"As Agents Only." [3886]

Mr. Pratt: Q. I now call your attention, Mr. Moncharsh, to another letter from Hammond Shipping Co. on this same subject, which will be marked for identification, if the Court please.

The Court: It may be admitted and marked.

(The document was thereupon marked U. S. Exhibit 183 for Identification.)

Mr. Pratt: Q. This letter addressed to your company, Mr. Moncharsh, being dated April 24, 1944, is directed to your attention. Was that brought to your attention (handing U. S. Exhibit 183 for Identification to the witness)?

A. I don't remember whether it was ever called to my attention or not.

(Testimony of Abraham Moncharsh.)

Mr. Pratt: I offer this letter in evidence.

Mr. Faulkner: I object to it as incompetent, irrelevant and immaterial and not proper cross examination, no foundation laid.

The Court: The objection is overruled.

Mr. Faulkner: Exception.

(U. S. Exhibit 183 for Identification was thereupon received in evidence.)

Mr. Pratt: This is dated April 24, 1944: [3887]

"April 24, 1944, B-123.

"Nye and Nissen, Inc.,
1301 17th Street,
San Francisco, California.

Attention: Mr. A. Moncharsh.

Dear Sirs:

"Subject: Spoiled Eggs: SS Edward Bates, Voyage No. 1.

"Kindly refer to our correspondence regarding a delivery of spoiled eggs to the subject vessel, and particularly with reference to letter from Mr. Robinson relative to the above subject matter.

"We have received no answer to Mr. Robinson's letter, dated September 20, 1943, and also we have received no settlement from your company other than a credit memorandum for 5 cases of eggs, in the amount of $65.25, which we received September 17, 1943. This credit, in our opinion, was entirely insufficient to cover the damage, which amounted

(Testimony of Abraham Moncharsh.)

to 30 cases of eggs that were unfit for use aboard ship and consequently were dumped overboard.

"As this claim has been open now for over ten months, we feel that some word from you regarding your disposition and settlement should be made.

"We are passing through the credit for 5 cases in the amount of $65.25, and are asking that you forward to this company, at an early date, your check covering the balance of the claim, that is, for 25 cases or a total of $326.25.

"A prompt reply will be appreciated.

Very truly yours,
THE UNITED STATES OF AMERICA,
WAR SHIPPING ADMINISTRATION,
By HAMMOND SHIPPING CO., LTD.,
General Agent."

Mr. Pratt: Q. Mr. Moncharsh, was any further credit memorandum ever sent to the Hammond Shipping Company for the United States in connection with the shipment?

A. I would not know.

Q. Was any further correspondence of any sort received from the Hammond Shipping Company in connection with that transaction?

A. I wouldn't know unless I looked it up.

Q. Will you look it up? A. I could.

Q. Preliminary to asking you the questions

(Testimony of Abraham Moncharsh.)

about this correspondence I asked you whether you had ever received any complaint from shipping companies representing the Government in connection with the delivery of produce to the War Shipping Administration boats, and you replied that you had received only the one in regard to the William S. Clark. Do you now recall that you did receive this complaint?

A. I still would not admit it. [3889]

Q. You do not admit it?

A. No, I still say there was only one complaint ever called to my attention direct by the shipping companies.

Q. And you now say still that your letter of September 16, 1943, does not refresh your recollection that you have before you the complaint of the Hammond Shipping Company in regard to rotten eggs on the steamship Bates?

A. I only dictated the portion outlining the way eggs are being handled.

Q. Now, this portion of the letter, the fourth paragraph, in which you say, "However, we have never received a serious complaint like your Mr. Bates has outlined to you. For an example, he states that on "April 4th, eggs are not good enough;" and so forth. Didn't you dictate that paragraph? A. That is correct.

Q. So you did have before you the statement made by the steward that the eggs were not good enough, didn't you?

(Testimony of Abraham Moncharsh.)

A. We handle hundreds of thousands of cases of eggs.

Q. I am asking you about this particular situation on this particular letter?

A. I did not receive that complaint directly.

Q. No, but it came to your attention, didn't it?

A. Verbally, yes.

Q. It came to your attention from Mr. Berman?

A. That is right. [3890]

Q. Now, in this fourth paragraph, the first sentence of which I just read, you refer specifically to the character of the complaint made by the steward. Didn't you see the letter in which the steward is quoted in connection with the handling of those eggs and their character?

A. I probably have.

Q. So you did have that letter before you?

A. I probably glanced through it.

Q. You did have that letter before you so you could answer it in detail, didn't you?

A. I probably have, yes.

Q. So you now recall, do you, that you did have a complaint in regard to the steamship Bates?

A. The complaint never came to me direct. That was the question.

Q. Well, have there been other complaints that came to you indirectly through Mr. Berman or Mr. Goddard about eggs delivered to other shpis of the War Shipping Administration?

A. I don't recollect any complaints.

Q. You do not recollect any? A. No.

(Testimony of Abraham Moncharsh.)

Q. Now, as a matter of fact, Mr. Moncharsh, you had continual trouble with Government customers in regard to the eggs which you were supplying, didn't you?

A. That is not the truth. Might I say further than that now, we handled hundreds and hundreds of thousands of cases of eggs. Now, I didn't say that we would not have a complaint. We have complaints from grocery stores, yet. So does everybody else have complaints. We don't have any more complaints than anybody else. We are [3891] handling a perishable commodity, and eggs is a very, very perishable commodity, and you are bound to have a few complaints here and there.

Q. So you have received a complaint directly or indirectly from shipping companies, haven't you?

A. I didn't say that. We might have—they might have come in. We might have had them from grocery stores, hotels and restaurants.

Q. I am talking about Government contracts.

A. I don't recollect any other complaint that came to me directly with the exception of the William S. Clark.

Q. You do not remember complaints coming to you directly? A. Yes. That was the question.

Q. Now, I want to ask you about complaints coming through either Mr. Smith or Mr. Berman or Mr. Goddard. Did you receive complaints communicated through them that came from shipping companies? A. I don't believe I have.

Q Or from Government contracts?

(Testimony of Abraham Moncharsh.)

A. Oh, occasionally we may have a complaint.

Q. Now, you recall, do you not, that you had serious difficulty with the Navy in connection with the supplying of eggs, didn't you? A. No.

Q. Weren't you debarred for a period of ten years——

Mr. Faulkner: We object to that and assign that as misconduct, if your Honor please, to ask whether or not they were [3892] debarred from the Navy and bringing into this case any relations with the Navy, unless they are part and parcel of this case.

Mr. Pratt: This is cross examination, if the Court please.

Mr. Faulkner: There is not a single Navy order testified to by Mr. Moncharsh in this case. There is not a reference to a single order testified to by this witness in this case.

The Court: Limit the scope of your examination to the issues here involved and the testimony already in the record.

Mr. Faulkner: May any reference be stricken from the record and the Jury instructed to disregard it?

The Court: Let it go out and the Jury will disregard it.

Mr. Pratt: I have concluded my cross examination. I asked you to produce if it was available——

Mr. Faulkner: That is on the William S. Clark?

Mr. Pratt: Yes.

Mr. Faulkner: We will have those with Mr.

(Testimony of Abraham Moncharsh.)

Eichler. We have asked him to check the records. Let me see if I have this correctly. You want a credit slip. What I have asked for is the bookkeeping transaction relating to the William S. Clark.

Mr. Pratt: We have in evidence a credit memorandum for 36 cases of eggs.

Mr. Faulkner: And some butter.

Mr. Pratt: Yes, and I asked whether there are any other [3893] credit memoranda relating to that boat.

Mr. Faulkner: Mr. Eichler will have anything that we may have. Is that all, Mr. Pratt?

Mr. Pratt: That is all, yes.

Mr. Faulkner: That is all. Mr. Fiske.

A. E. FISKE,

called on behalf of defendants; sworn.

Mr. Faulkner: The witness does not hear very well, your Honor.

Direct Examination

Mr. Faulkner: Q. Mr. Fiske, what is your business? A. Purchasing agent.

Q. In the year 1943 were you the purchasing agent for the American President Lines?

A. I was.

Q. Do you recall, Mr. Fiske, a transaction between the firm with which you were the purchasing agent, namely, the American President Lines, and

(Testimony of A. E. Fiske.)

the firm of Nye & Nissen, in relation to some butter and eggs that were on a boat called the William Clark? A. Yes, sir.

Q. Do you remember in connection with that transaction, Mr. Fiske, whether you went out to the firm of Nye & Nissen and had a talk with Mr. Moncharsh in relation to that shipment?

A. Yes, sir.

Q. Do you recall about when that was?

A. It was sometime [3894] in November, the fore part of November, I believe.

Q. 1943? A. 1943.

Q. At that time did you examine or taste or smell any butter? A. Yes, sir.

Q. Prior to your being out to the firm of Nye & Nissen had you had a conversation with anyone in the firm of Nye & Nissen about replacing butter and eggs on the William Clark?

A. Yes. I called the firm up by phone and asked Mr. Smith—he wasn't there, but I got hold of Mr. Moncharsh and told him I had word from the steamer Clark at San Pedro or Wilmington that there was trouble with the butter or eggs and I thought it would be better if they would have somebody to look at them. Mr. Moncharsh told me that he would have his Los Angeles office get in touch with the steamer at once. After a few days—I don't just remember how many—Mr. Moncharsh called me up and said the butter had come back from the steamer, would I come over and take a look at it. I got, I think it was, Mr. Mullins—I am

(Testimony of A. E. Fiske.)

not sure—but Mr. Mullins from the steward's department to go over with me and we looked at the butter and tasted it.

Q. What did it taste like?

A. Well, it had been packed as though it had been in with——

Mr. Pratt: I object. You ask what it tasted like. He is not answering that.

Mr. Faulkner: I asked him what it tasted like and he is [3895] answering it.

The Court: Read the question and answer.

(Record read.)

Mr. Faulkner: Q. Describe the taste of the butter, Mr. Fiske. Describe the taste of the butter.

A. It tasted as though it had been carried in with vegetables and fruit—oranges and apples and so forth.

Q. At the time of this occurrence, Mr. Fiske, you had been familiar with the handling of merchandise for the American President Lines on ships for many years, had you not? A. Yes, sir.

Q. And are you familiar with the flavors that articles take on from refrigeration?

A. Yes, sir.

Q. And did you observe in tasting that butter flavors that butter would take on from refrigeration? A. Yes, sir.

Q. At the time and after you had tasted the butter, did you have any conversation with Mr. Moncharsh as to whose loss it was?

(Testimony of A. E. Fiske.)

A. Yes, sir. He said, "Well, whose loss is this?"

I said, "It looks like it is the American President Lines, but that is something that is not for me to decide, but from the condition of it I would say it was their fault for packing it with something else—fruits and vegetables."

Q. Mr. Fiske, from your examination of that butter and tasting it was there any question in your mind that the condition of [3896] that butter was the result of the manner in which it was carried in refrigeration?

Mr. Pratt: I object to that question, if the Court please.

Mr. Faulkner: It is his life work. He is speaking for his own company.

The Court: Read the question.

(Question read.)

The Court: The form of the question is objectionable. It will be sustained.

Mr. Faulkner: On the ground he is not qualified?

The Court: It is a compound and complex question.

Mr. Faulkner: Q. Mr. Fiske, in connection with your duties as a purchasing agent of the American President Lines in 1943, how long had you discharged those duties?

A. Before I went to work for the American President Lines, at the time it was formed, I had previously been with the Dollar Lines since 1928.

(Testimony of A. E. Fiske.)

Q. Prior to that had you been with another shipping company?

A. The Coos Bay Lumber Company.

Q. And had you handled, as the purchasing agent for a company like the American President Lines, was it a part of your duties to supply ships with merchandise to be carried in chill or storage units aboard ship? A. Yes, sir.

Q. And have you examined merchandise that has been in [3897] refrigeration? A. Yes, sir.

Q. And have you done that constantly over the years? A. Yes, sir.

Q. Now, then, the tastes and the flavors that were apparent to you when you tasted this butter at the plant of Nye & Nissen, in your opinion were the odors and tastes that were discernable to you the result of taking on the odors and presence of fruits and vegetables in refrigeration?

Mr. Pratt: I object to that. I would like to cross examine him on his qualifications.

The Court: Proceed.

Mr. Pratt: Q. Mr. Fiske, are you a butter expert? A. No, sir.

Mr. Pratt: That is all.

Mr. Faulkner: Q. How much butter have you handled, Mr. Fiske, in your life?

A. Oh, it is hard to estimate, but I suppose close to a million pounds.

Q. Have you tasted butter from time to time in relation to determining its quality?

(Testimony of A. E. Fiske.)

A. Well, somewhat, occasionally, not regularly, but occasionally.

Q. And from taste do you feel that you can tell whether butter is good or bad?

A. I think so.

Q. Is that based upon your experience?

A. I think so.

Q. In handling maybe a million pounds of butter? A. Yes, sir. [3898]

Mr. Faulkner: I will submit the objection, your Honor.

The Court: Read the question.

(The Reporter read the question as follows:)

"Q. Now, then, the tastes and the flavors that were apparent to you when you tasted this butter at the plant of Nye & Nissen; in your opinion were the odors and tastes that were discernible to you the result of taking on the odors and presence of fruits and vegetables in refrigeration?"

The Court: You may answer the question.

The Witness: A. I think that is was.

Mr. Faulkner: Q. Mr. Fiske, at that time your company had been dealing with the firm of Nye & Nissen for a great many years, had they not?

A. Well, yes. I do not know exactly how many, but for quite some time.

Q. And with whom did you usually carry on your business relations in the company?

Mr. Pratt: I object to that as not relevant.

Mr. Faulkner: That is right. I will withdraw that. That is all.

(Testimony of A. E. Fiske.)

Cross Examination

Mr. Pratt: Q. Mr. Fiske, did you taste any of the eggs on the William Clark? A. No, sir.

Mr. Pratt: That is all.

Mr. Faulkner: That is all. The witness is excused, your [3899] Honor.

The Court: You are excused.

E. F. WHITMORE

called on behalf of the defendants; sworn.

The Clerk: Q. Will you state your name?

A. E. F. Whitmore.

Direct Examination

Mr. Faulkner: Q. Mr. Whitmore, in the years 1938 to 1944, by whom were you employed?

A. Nye & Nissen.

Q. And in what capacity?

A. I was the operating manager of the various packing plants and the supervising egg inspector of the various packing plants.

Q. For how many years have you been engaged in the egg business? A. Twenty-five.

Q. By what firm other than Nye & Nissen have you been employed?

A. I have been employed by Nye & Nissen since 1921.

(Testimony of E. F. Whitmore.)

Q. You were employed by the firm before the firm of Baum and Moncharsh——

A. Yes, sir, prior to that time. The first experience I had in eggs was back in 1919 with the old firm of Nye & Nissen.

Q. Commencing in the years 1919 and 1921 has your life been devoted to the handling of eggs under various conditions? A. Yes, sir. [3900]

Q. Have you studied the subject matter of eggs, their conditions, their qualities and their preservation?

A. I have done that constantly since along about 1921.

Q. Have you studied the matter of refrigeration in respect to the keeping of eggs?

A. Yes, sir.

Q. In connection with your duties what quantities of eggs have you handled in various ways through the years?

A. During the period the west coast was an export shipper of eggs to the east we were packing about five to six hundred carloads a year. I made regular trips to all the various packing plants, stayed there sometimes months at a time, and that was the constant procedure during that period of time. I supervised the pack. I supervised the girls and trained girls. I did educational work in the producing areas. I would follow eggs to New York. After I watched them packed and loaded on the Pacific coast I would go to New York to see them unpacked in the large candling rooms. I watched

(Testimony of E. F. Whitmore.)

them graded and candled in the candling rooms and from that work I tried to form some ideas as to the betterment of shipping eggs and getting them there in as near the condition they were in as when we packed them. I think it was after the second trip I made to New York I made recommendations to the company to put in chill rooms in all the packing plants. This subsequently was done within a year's period. I did educational work among the ranchers, both in Washington and in [3901] Utah. I spent two or three weeks to a month for a period of four or five years through the middle west in the packing areas through the middle west.

Q. And in all of that time you were devoting yourself to eggs, their conditions and their quality, is that correct? A. Yes.

Q. Now, Mr. Whitmore, have you ever had occasion to follow a particular quantity of eggs, ride on the train with it, to determine the effect of refrigeration and the passage of time on the quality of eggs which you knew at the starting point and which you subsequently checked at the finishing point?

A. I packed a carload of eggs in Petaluma in 1934 and rode the freight train to New York. I went into the eggs at every division point across the continent to see what the deterioration of the eggs was during that period, delivering them in New York on the tenth morning, delivering them to the A. and P. warehouse at Hoboken, unloaded

(Testimony of E. F. Whitmore.)

the car, and put them in the warehouse, and watched the candling of the eggs there.

Q. Have you, in your experience in that field, Mr. Whitmore, observed the quality of eggs under conditions when the rancher has possession of them, that is, the actual gathering of the eggs? Have you observed conditions—not the growing of the eggs—but in the conduct of egg ranching?

A. Well, I would say that all ranches are different.

Q. I mean, have you observed those conditions?

A. Yes. [3902]

Q. On various ranches?

A. On various ranches, that is right.

Q. Have you participated in the methods to be followed in the conduct of egg ranches?

A. I did educational work in Utah and Washington on that in the handling of their eggs from the time that they were loaded for the purpose of getting a better egg.

Q. After the eggs leave the ranch, they come into a packing plant, am I correct in that?

A. That is correct.

Q. Have you observed the handling of eggs in respect to packing plants throughout those years?

A. Yes, sir, that was my work.

Q. Have you observed the candling of eggs?

A. That is correct.

Q. The inspection of eggs? A. Yes, sir.

Q. Now, then, after the eggs have left the pack-

(Testimony of E. F. Whitmore.)

ing plants you have observed eggs during the course of delivery, is that correct?

A. That is correct.

Q. So that during the years you have devoted your time to, you might say, eggs, from the beginning until almost the consumption of the egg, is that correct? A. That is correct.

Q. Have you studied the regulations of the Department of Agriculture in respect to eggs?

A. Yes, I am very familiar with them. I usually have the promulgation of grades with me most of the time and read them a lot. [3903]

Q. Have you observed during the period of years between 1938 and 1944 and participated in the inspection of eggs in which the inspectors were members of either the Department of Agriculture or the Veterinary Corps? A. Yes, sir.

Q. Are you familiar with the subject of processing eggs? A. Yes, sir.

Q. Have you, in connection with processing eggs, been a contributor in any substantial form to the present day efficiency in the matter of processing eggs throughout the country?

A. Well, in the 20's I did a lot of experimental work in the processing of eggs. I developed a processing machine in 1927 and 1928 which was used a great deal through the west coast and the middle east.

In 1944—in those days they used a heavy processing oil similar to Nujol. The industry here on the Pacific Coast would buy a joint car with the drug-

(Testimony of E. F. Whitmore.)

gists. The druggists would bottle the oil and sell it for Nujol or bowel lubricant. The egg people would put it in a tank, heat it and process their eggs. This was a heavy viscous oil. In 1934 I talked with the Sonnenberg people of New York, after I had tried out using coal oil, although you could not use coal oil on account of the odor, I suggested to them that if they would make an oil with a viscosity of about seventy and with a pore test of about 30 to 32, that I though that they would have something. About a year later than that they [3904] developed the oil, and Mr. Sonnenberg told me the following year in New York it was at my suggestion they had developed that light-bodied oil, and that is generally used through the processing area and generally used by the industry for processing oil today.

Q. Are you familiar with the matter, the practice, and when it was used, of powdering eggs?

A. During the period that the heavy oil was used—this goes back to ten, twelve, thirteen years—the oil left quite a sheen on the egg, and in those days the eggs were packed in cases and delivered to the grocery stores, and as we know, any substance that has oil on it has a tendency to pick up dust. The dust will stick. And there was quite an objection to that. I think everyone in the industry at that time used a chalk to eliminate that oily condition or dust collecting on it. I have not seen any eggs powdered, I do not think, in fourteen years any place.

(Testimony of E. F. Whitmore.)

Q. In other words, on a processed egg today, Mr. Whitmore, is the accumulation of oil sufficient to require any powdering of any kind?

A. No, because the oil—with this very light oil the egg absorbs it. What remains on the shell is absorbed very rapidly, and today it is rather difficult to tell a natural egg, as we call them, from a processed egg.

Q. In your years of experience, Mr. Whitmore, can you tell from the examination by eye or the mere feel a processed egg [3905] from a natural egg?

A. I can look at a case of eggs and say by probably observing the fillers and flats, I may see some oil stains on the fillers and flats and I would say possibly, or I would think they were possibly processed eggs. Those fillers and flats could possibly have been used previously, and I would never state with a degre of accuracy that the eggs were processed eggs unless I tested the eggs to be sure of it, because I could not be able—I tried many times myself picking out eggs, naturals, mixing them with processed, and then trying to pick them out afterwards. I couldn't do it. I could test them and state definitely.

The Court: We will now take a recess.

(Recess.) [3906]

Mr. Faulkner: Q. Mr. Whitmore, in connection with the determination of quality of eggs, how are the quality of eggs determined for purposes of commercial trade ordinarily?

(Testimony of E. F. Whitmore.)

A. The quality of eggs in commercial work is generally determined by calling in a Department of Agriculture inspector to have the eggs inspected.

Q. I mean how is it determined? Is it determined by inspection, by candling, or grading?

A. Well, it is determined by candling; the quality is determined by candling.

Q. In respect to the candling, Mr. Whitmore, it has been testified to many times here in court, not in respect to candling in the packing plant that you had charge of in the firm of Nye & Nissen. I will ask you if you have observed candling in other packing plants? A. Yes.

Q. Have you observed candling there?

A. Yes.

Q. And you have observed candling in the plants of Nye & Nissen during the years 1938 to 1944?

A. Correct.

Q. Will you explain briefly for the court and jury the process through which the egg goes from the time it is received from the rancher until it is candled and packed, the general practice.

A. Well, the trucks will go out to the producers, pick up the eggs and they come into the plant. They are checked and tagged. Then they go to the candling benches and the girls, or the candlers candle the eggs. Then when they are finished candling a list is made of grade, a grade slip showing [3907] what the various grades in the cases. For example, one case might have as many as 25 grades. Do you want me to state the process of candling?

(Testimony of E. F. Whitmore.)

Q. Do it briefly.

A. Well, the girl is trained to tell the specifications which are embodied in an AA or an A, a B, or a C; and she tries to understand from the specification what that egg will show when she throws it before the light and twirls it. It is her conception of the grade after looking at the eggs through the light in the various crates that she will place on the candling bench.

Q. In addition to placing eggs in particular containers in respect to grades, do they likewise make a differentiation between the size of the eggs?

A. Yes, that is all part of the work.

Q. How is that done?

A. They have separate cases. Those are weighed mostly. Normally, in candling, after a candler has been at the bench a period of time, well, she gets accustomed to the mechanical operation of handling an egg and she will determine very closely by the feel of the egg the size, that is, whether it is a Large, Medium, or Small. If there is any doubt in her mind she will weigh them. The scales are on the bench. She will weigh any of the eggs that she is in doubt about. Of course, the human element is involved there and there will be a lot of eggs, we will say, that will go into a case of large eggs, not a lot, sometimes half a dozen or a [3908] dozen in a case, eggs that feel large and look large, but actually would not weigh as much as a Large egg should. If she had to weigh every egg in the case she would never get through candling a case

(Testimony of E. F. Whitmore.)

of eggs, because the time element would be too great.

Q. The normal expert candler, do you know how many cases an hour they will candle?

A. Well, the average in packing plants will run about three cases an hour. The top of individual candlers, if they are expert, they will run 27 or 28 cases a day in some places, but the average is about 23 cases a day.

Q. An AA egg and a U.S. Special, are they identical in the requirements under the Department of Agriculture? A. Yes.

Q. And an A and an Extra? A. Yes.

Q. A B and a Standard? A. Yes.

Q. In determining the quality of an AA egg how many different index values exist in determining the quality of an AA egg?

A. Three.

Q. Does that mean, Mr. Whitmore, that there are three types of eggs that come within an AA grade? A. That is correct, yes.

Q. What are those three classes known as, have they a name?

A. They are named as the Van Wagenen for broken-out eggs.

Q. Is that recognized as a part of the description of an AA egg under the rules and regulations of the Department of Agriculture in existence during the year 1944?

A. Yes, it was added to the promulgation of grades in 1943. [3909]

(Testimony of E. F. Whitmore.)

Q. Now, Mr. Whitmore, I will show you U.S. Exhibit 21 for Identification, which I will now offer in evidence as a Defendants' Exhibit, your Honor.

The Court: Admitted and marked.

(U.S. Exhibit 21 for Identification was admitted in evidence and marked Defendants' Exhibit EG.)

Mr. Faulkner: I want to be sure it is the same regulation.

The Court: It is already in as U.S. Exhibit 21.

Mr. Faulkner: Q. I will show you U.S. Exhibit 21, or Defendants' Exhibit EG, and—will it be agreeable to you, Mr. Pratt, if I use a counterpart, you have one over there, and I think it will be easier for you to turn the pages, Mr. Whitmore, and I will give you my copy.

Would you read the provisons of the Department of Agriculture Regulations which divides an AA egg into three separate parts?

A. The AA egg is classified as, "The shell must be clean, unbroken and normal. The air cell must not exceed one-eighth inch in depth, and may be regular or slightly wavy. The yolk outline may be slightly defined. The yolk must be free from defects or blemishes visible before the candle. The white must be clear and firm."

Then he goes on with the description on page 28:

"Terms descriptive of the white.

"Firm—A firm white is one that is sufficiently [3910] thick or viscous to permit but limited movement of the yolk from the center of the egg when

(Testimony of E. F. Whitmore.)

it is twirled. A firm white should have a consistency not lower than the white shown in No. 2 of the Van Wagenen Chart of Broken-out Eggs."

No. 2 white of the Van Wagenen Chart of Broken-out Eggs is this third index value of AA eggs.

Q. I show you here what purports to be a Van Wagenen chart and ask you if that is a photograph of the Van Wagenen chart of, what do you call that, a Broken-out Egg?

A. "Broken-out Egg." Yes, this is a photostat of the Van Wagenen Chart.

Q. That was put out by Cornell University?

A. Yes, Professor Van Wagenen.

Mr. Faulkner: I offer this in evidence, if the Court please.

(The chart was marked Defendants' Exhibit EH.)

Mr. Faulkner: Q. Now, Mr. Whitmore you were just reading something there from that counterpart of Exhibit U.S. No. 21, and what paragraph is that?

A. That is page 4, paragraph 28, as to description.

Q. Paragraph 28?

A. Page 4, Firm White.

Q. In connection with the determination of quality of an egg, Mr. Whitmore, the most effective way is to break the egg open?

A. Yes.

Q. This Van Wagenen Chart which you have

(Testimony of E. F. Whitmore.)

referred to as a [3911] broken-out egg is the next index? A. That is correct.

Q. Mr. Whitmore, it is true, is it not, that under the rules of the Department of Agriculture the white of the egg must be clear and firm; is that correct? A. That is correct.

Q. But the firmness of the white is broken down into three separate categories? A. Yes.

Q. Those indexes are 1, 1½ and 2 in the Van Wagenen Chart? A. Yes.

Q. Mr. Whitmore, when you candle an egg before the candling light, what effect has the firmness or lack of firmness of the white upon candling and reaching a determination of the quality?

A. It depends on the yolk shadow, or, as the department describes it, as a slight defined yolk under the light. In other words, if your yolk is viscous, or your white is viscous enough in the No. 1 Van Wagenen, the index value No. 1 of the Van Wagenen chart the yolk is in the center of the white and the white is so positioned that you have a very, very slight shadow of the yolk, it blends into the white, and when breaking it out the white holds together and the yolk slips right on out.

In the Van Wagenen description 1½ you will find there is a slight defining in the white and the yolk will be slightly off to the side. Under the light you will have also on here, slightly defined yolk, you will have a little more yolk shadow than in the No. 1 index. That will break out and your white [3912]

(Testimony of E. F. Whitmore.)

is still holding the egg but the yolk will be a little bit from the center. In your index value of 1½ your yolk is considerably more defined. The yolk, itself, is defined, but slightly defined, a larger area of yolk shadow is shown in twirling the egg over and over so that the yolk sits down lower in the white than it does in either of the other two. These are the ways those eggs break out.

Q. Mr. Whitmore, I show you U. S. Exhibit 22, which is a picture of U. S. Grade AA, A, B, and C eggs, and I call your attention in that picture to certain details, first in connection with the determination of what is or what is not an AA egg. It is true, is it not, that one of the requirements is the depth of the air cell? A. Yes.

Q. As the air cell progresses in its depth that will be reduced, as disclosed in that picture, the description of the eggs, am I correct?

A. That is correct.

Q. In addition, irrespective of the condition of the air cell, it is true, is it not, Mr. Whitmore, that regardless of the depth of the air cell that in order for an egg to be an AA it must have the appearance that will indicate to the observer that it has all of the conditions described in the Department of Agriculture's rule, namely, that the shell be clean and unbroken, the air cell be a certain depth, the yolk slightly defined, free from defects and blemishes, and the whites are clear and firm?

A. Yes. [3913]

(Testimony of E. F. Whitmore.)

Q. Those are the general every-day descriptions that have been in existence for many years?

A. Yes.

Q. In determining the quality of—I am confining it to AA eggs and then I will generalize on the others—an AA egg, the important feature is the color of the yolk as you twirl it before the light?

A. Yes.

Q. I show you U. S. Exhibit 33 here. This exhibit relates the highest grade egg as Special, and the next as Extra, next as Standards, and next Trades. I will ask you to look at that. I ask you to compare the outline of the yolks in those two exhibits, if you will. Have you looked at them?

A. Yes.

Q. Mr. Whitmore, if you were candling for the third index value, that is value 2 as described in the Department of Agriculture rule, would you observe a yolk as outlined in Exhibit 22, would that be the appearance of the yolk if you were following the requirements of the Department of Agriculture to grade the second of the index values under the Van Wagenen Chart as to AA?

A. No.

Q. Why?

A. Because your yolk shadow is a little greater than here, No. 22.

Q. Referring to the other print, in which the highest grade of egg is referred to as Special, I will ask you if you have that exhibit.

A. This exhibit, as shown in this other exhibit,

(Testimony of E. F. Whitmore.)

probably indicates Van Wagenen AA egg as index value 2, or approximately so, as near as I am able to determine it from [3914] that print.

Mr. Faulkner: I would like these to be put here, if your Honor please. May I ask through the court if the jurors can see that very well.

Q. Mr. Whitmore, will you step down to the board, please? You have given testimony with respect to this chart. In other words, on this Exhibit Defendants' EH, in connection with the AA egg, which of the photographs represent a broken-out AA egg on that chart?

A. No. 2. As you will note——

Q. Now, wait a minute. Which of the three of the eggs on that chart represent an AA egg?

A. These three—1, 1½ and 2. The 3 index value is an AA egg.

Q. On that chart what are the index values of an A egg?

A. 2½ and 3. That is two values.

Q. What are the index values or the values of a B, C and Standard? A. That is 3½ and 4.

Q. And what are the index values of the Trade or the C? A. 4½ and 5.

Q. So that in the 4 standards, eggs ranging from AA to a C or from Special to a Standard are divided into nine separate classifications, is that correct, under the rules of the Department of Agriculture?

A. Well, that is between the AA and A, the B and the C, there are nine grades——

(Testimony of E. F. Whitmore.)

Q. In four classifications?

A. That is correct.

Q. And there are three separate index values to the so-called [3915] AA egg?

A. Yes, sir, that is correct.

Q. Now, in respect to the top Exhibit here which I think is No. 22, if you were candling the egg before the candle which of the index values 1, 1½ or 2 would most normally appear in the manner as shaded in U. S. Exhibit No. 22?

A. Index value 1.

Q. Would be reflected by which one?

A. That is correct—by this.

Q. By AA?

A. Over there (indicating).

Q. Mr. Whitmore, you have handled literally thousands of eggs before the candle?

A. Many thousands.

Q. And you observed the yolk?

A. Yes, sir.

Q. You recognize that these are merely pictures to try to capture on paper what you see before a candle? A. That is correct.

Q. Is there any question as to which of the two exhibits, U.S. Exhibit 33 and U.S. Exhibit 22, shows the yolk more clearly defined and ruddy?

A. This exhibit here shows the yolk more thoroughly defined and ruddy.

Q. Which of the index value of a Grade AA egg would be most clearly indicated by the outline of a U.S. Special or a U.S. Grade AA?

(Testimony of E. F. Whitmore.)

A. Let me have that again.

Q. Index value 2——. A. Yes.

Q. U.S. 1—which of those index values, all of which are an AA egg, is typified in respect to the outline of the yolk in the Exhibit 22 and 33?

A. This typifies the index value 2 in this yolk, here. [3916]

Q. Mr. Whitmore, if you were candling and visualizing an AA egg following the Van Wagenen Chart, and following U.S. Exhibit 33, and another candler was following U.S. Exhibit 22, what would the result of his candling be?

A. Well, a candler following this exhibit, here—whatever this exhibit is, I don't know——

Q. 33.

A. They would get the three index values in their AA eggs. The candler that follows this chart, here, the only egg that they would probably get as an AA would be the index value 1, and all the eggs that have an index value of 2 they would be graded as an A. The index value of 2½ they would consider an A, and the index value of a 3 they would grade into a B. In other words, if they were following this chart, here, if the school of instruction that they had followed had taken this chart and instructed them accordingly, they would be grading a grade lower in each of the grades of eggs in determining the quality.

Q. In other words, Mr. Whitmore, is there any question that the outline of the egg is more clearly

(Testimony of E. F. Whitmore.)

defined as a red substance in the highest grade or the Special than it is in the A on Exhibit 22?

A. Let me have that question again.

Q. In other words, in examining these two exhibits, both put in by the Government, isn't the color of the yolk more reddish, we will put it, in Exhibit 33 under a Special than it is in Exhibit 32 under A?

A. More reddish than this (indicating)? [3917]

Q. Than in this.

A. No, I wouldn't say it was.

Q. What is the difference between A and Special?

A. There is a slight difference in the yolk coloring.

Q. What is the difference between AA and Special?

A. This AA—U.S. Special here—would take the low index value of 2 on the Van Wagenen Chart, and this one would take the index value of 3 on the Van Wagenen Chart, and breaking them out, that is about the way they would show. In other words, this would be the low index value of an AA egg or a U.S. Special.

Q. In other words, when you look at this broken-out egg, what is the difference between a third index value of AA and the first index value of an A?

A. Your white is a little more viscous and it is not flattened out as much. You can see the differences here. The viscous part of the white has run out to the side a little more. This is still holding

(Testimony of E. F. Whitmore.)

up firmer and the yolk is sitting higher on the white.

Q. Will you go back to the stand for a moment? What paragraphs of the Department of Agriculture rules cover the Standards, the A's and the B's?

A. Page 5, paragraph 29.

Q. In other words, the index values which you have been referring to are part and parcel of the Department of Agriculture regulations refining the quality of AA, A, B and C eggs?

A. That is correct.

Q. And each of the index values in that photograph are referred [3918] to and are a part and parcel of that, is that correct? A. Yes, sir.

Q. Mr. Whitmore, in connection with the determination of the quality of eggs, have you observed the Veterinary Corps inspectors inspect eggs in the plant of Nye & Nissen from time to time?

A. Yes, sir.

Q. During the years 1938 to 1944?

A. Yes, sir.

Q. And have you observed the results of their inspections from time to time? A. I have.

Q. And have you, on occasions, candled the same eggs that they had candled to see if you have reached the same conclusions? A. Yes, sir.

Q. Now, in the course of that, have you had occasion to do that in respect to Colonel Kielsmeier? A. I have.

Q. What was the subject that was being dis-

(Testimony of E. F. Whitmore.)

cussed when you candled the same eggs, examined the same eggs that he had examined?

A. Well, there were two occasions that I discussed eggs with Colonel Kielsmeier. Do you wish me to tell them both? The first occasion happened in 1941, when the truck had been at the Presidio and had delivered, had taken on a lot of eggs—I do not recall whether it was 50 or 40 cases—and he came back and was backed into the plant there at 324 Townsend Street, and was unloading the eggs as I came into the door. I asked him what the trouble was, and he said they had been rejected. So when he put five cases off I grabbed the truck and took them back to the candling room and [3919] candled them. I scored them 87 percent Extras. I took them back to him and said, "Better put them back on the truck. I will go back out with you, because I would like to have someone tell me why these do not grade Extras."

We went back to the Presidio. Half of the eggs were unloaded on the platform and half on the truck. There was a young private there who was apparently doing the inspecting. He drew five case of eggs, some from the platform and some from the truck. He went into the candling room, and I was in the candling room with him. He candled a hundred eggs from each case and said nothing about them, made no remarks, and when he finished candling he said they were not a good delivery and he would not take them.

I said, "You just don't know an egg from a

(Testimony of E. F. Whitmore.)

Ipatsknell, and you had better get somebody down here to tell me why these eggs won't grade an Extra."

He went to the telephone and phoned. A few minutes after he called me. There was a young fellow by the name of Corporal Smith, and I believe Smith was the inspector out there at the time. Smith asked me what the trouble was.

Smith said, "I will come down and inspect those eggs if you will take my grading."

I said, "I won't agree to that, because I know what those eggs will grade, and I want somebody to tell me why they grade otherwise." [3920]

Smith came down. He took the five case that the other man left on the bench. He candled the eggs and graded them 85 percent, which was 2 points lower than I graded them. When he finished with the eggs Colonel Kielsmeier came in, and Colonel Kielsmeier said, "What is the trouble?"

I said, "There isn't any trouble. This young man said it wasn't a good delivery, and I challenged him," and I said, "Corporal Smith came over and candled those eggs and graded them 85 percent, which was within 2 percent of what I graded them, and they were a good delivery."

Colonel Kielsmeier said, "I will look at them." He took one case of eggs on the bench that this corporal had inspected. He candled a hundred eggs and had a lot of eggs piled on top. I walked over and I said, "What are those eggs?"

He said, "They are B's and Trades."

(Testimony of E. F. Whitmore.)

And I said, "Colonel, I will bet you $100 to $10 that you can get a Department of Agriculture inspector, one of your own men, and a neutral party, and they will pass these eggs as Extras, and I will bet you ten to one they won't find one egg that will grade a Trade."

And Kielsmeier said, "I am the final authority. I won't take them."

So I took them to the plant.

Q. In that instance you graded them, Colonel Kielsmeier grade them, the corporal graded them, and the private graded them, and each man reached a different conclusion is that correct? [3921]

A. That is correct.

Q. Have you ever had a discussion with Colonel Kielsmeier in which, instead of relying upon the opinion of candling, the question of who was correct in relation to the quality of the eggs was demonstrated right then and there?

A. A few days later he came into the Townsend Street plant, went back to the candling room, and was making an inspection. I do not know of what. I also went in there. He had a lot of eggs piled on the shelf in front of him. I walked over to him and said, "How is the eggs?"

He said, "There are too many Bloods in it."

I said, "Why?"

He said, "There are too many Bloods in it."

I took the eggs, candled them, and I said, "There are no Bloods in those eggs. I will break them and show you."

(Testimony of E. F. Whitmore.)

I broke 26 eggs in a plate to show Colonel Kielsmeier that there wasn't a Blood in them. There was a heavy pigmentation in the membrane, and with a white light it would make an egg look like a brown egg, and that is why Colonel Kielsmeier was throwing them out for Bloods.

Q. What relation does a Blood egg have in determining the grade of a quantity of eggs if you would inspect a hundred cases of eggs and you determined there were Bloods in them? What category do they go into?

A. Well, a light blood spot on the yolk is not considered an inedible. In the specifications [3922] in the various grades the tolerance, I think, includes about three Bloods or two Bloods to a case. I do not know offhand. But they do allow a tolerance of Blood spots in a case.

Q. If you exceed that tolerance the eggs won't grade, is that correct?

A. That is right. If your tolerance is exceeded the eggs won't grade.

Q. So the matter of determining from the candling process whether an egg is a Blood is an important feature of determining whether a quantity of eggs will pass, is that correct?

A. That is correct.

Q. Is that easy or difficult to determine in the candling process?

A. Well, it is somewhat difficult, yes. Small spots are really difficult to find, especially in extremely fresh eggs. They have not cleared them-

(Testimony of E. F. Whitmore.)

selves to a point where a candler detects them easily. And then with the rapidity that they candle a certain amount of Blood spots will get by any candler, I do not care how careful they are, or how good they are, and I challenge anybody on candling eggs, regardless who they are, to candle eggs, to put out 24 or 25 cases a day and none of those cases will contain some blood spots.

Q. Is a stuck yolk egg, as defined by the Department of Agriculture, an egg which is acceptable for delivery as part of a quantity of eggs?

A. No, a stuck yolk egg is considered an inedible egg. [3923]

Q. In connection with determing in the candling process whether or not an egg is a stuck yolk, how is that determined?

A. Well, a stuck yolk is definitely a stuck yolk, and if it is stuck, and you twirl it, you would break the membrane of the yolk and it would become an addled egg.

Q. Is every egg that you see before the candle, that has the appearance of being a stuck yolk a stuck yolk? A. No, definitely not.

Q. Why?

A. Well, I have seen eggs—and I see them all the time—in the candling room. I know that these eggs are not over four or five days old at the best, and some of those eggs, in candling a case of eggs, will have the appearance of a stuck yolk. It will have the appearance that the membrane of the yolk has adhered to the membrane of the shell. If

(Testimony of E. F. Whitmore.)

your twirl that egg or twirl it [illegible] the yolk will center itself. It will come back where your outline is greater, but definitely it is not a stuck yolk, and possibly at some future time it would be stuck, but it is not stuck at that time and it will break out as a [illegible] egg.

Now, a lot of inspectors—and I have seen a lot of them—will take an egg where the yolk has centered in the small end, has packed itself or centered into the small end of the egg, take it to the light, twirl it, and the yolk stays there. That egg is classified as a stuck yolk. You can go on a poultry ranch and watch eggs that are laid today packed with the big [3924] end down; where the volume of the albumen is greater in the big end it will force the yolk to the small end. And if it stays in that position four or five days that yolk becomes fixed up in the small end of the egg. It is not stuck, but if you reverse the position in a day or so it will clear itself. But so many inspectors decide that that is a stuck yolk on looking at it.

Q. Mr. Whitmore, from your experience over the years, as you have testified, I will ask you if a chicken has the basic power to lay good eggs—if that chicken will always lay good eggs regardless of her diet? A. Most certainly not.

Q. Does diet play a part in the quality of eggs produced by chickens on a chicken ranch?

A. Two factors in producing good eggs are the foundation stock plus the feed, and from that point

(Testimony of E. F. Whitmore.)

on it is the handling and care of the eggs after they are laid.

Q. Have you seen and observed that and tested that statement by personal observation and tests which you, yourself, personally participated in?

A. On three different occasions I was in Utah spending considerable time in Utah in the early '30's. We had one particular rancher in the Ogden territory, running about a thousand chickens, and this man was getting around 65 or 70 percent AA's in all the eggs that were coming in the plant, and I do not know when the drop-off took place, but one of the candlers reported it to [3925] me, and I candled the eggs and saw that there was quite a break-down. He was not getting any A's, and I decided I would go out and see him, because it is altogether impossible to diagnose conditions unless you observe them. I went out and talked to him. He had the same flock. He claimed he was feeding them the same. Everything was handled the same. But in walking around the coops he finally admitted to me he had been handling peaches over a week or ten days and he was feeding the peach stones and the peach skins to the chickens. Now, what had taken place was this: From a grain feed, like a laying mash, the diet of the chickens was changed to peach stones, the chicken would rather eat the peach stones and peach skins than the laying mash, with the result that it was reflecting in their eggs. The white were breaking down and becoming watery. [3926]

Testimony of E. E. Whitmore.

A poultryman that had a poultry ranch in Hayesville Valley got 900 young laying birds and we ran this experiment for him over a period of a year to determine the value of feed in feeding so we could recommend to our poultrymen that we were gathering eggs from. He had six pens with about a hundred and fifty birds in each pen. We had 300 here, 300 there and 300 there. Now, in Number 1 pen we fed the chickens a laying mash produced by one of the national manufacturers; in Number 2 we fed a laying mash produced by one of the national manufacturers; and Number 3 we fed a laying mash produced by one of the manufacturers in Utah. Then we followed that constantly over a period of six months with this result. I candled the eggs personally in these three different groups, and this lot in the "1" group was consistently grading a higher number of AA eggs than either of the other groups, due to the fact that the viscosity of the white was greater. It had a stronger, firmer white. And we then changed the other pens and put them all on the laying mash that was used in the "1" and "2" pens. A short period of time elapsed and they all got back to about the same grading as the Number 1 and 2 pens.

In 1934 I was called into Washington to work with the Albers experimental station there to see if we could overcome a condition that had developed where there was quite a number of cars of eggs in New York that were laying on the track [392] there that nobody wanted, because the quality was

(Testimony of E. F. Whitmore.)

so poor. And inasmuch as Washington had the reputation of being one of the best producers on the coast, it was rather a hard thing to believe that a condition of that kind could develop. I went up there to work with Mr. Peters, head of the experimental station. I was up there six week. And after we'd gathered eggs from all over the state, from Chehalis north to the Canadian line, looked at them, broke them, it was fundamental that there was something happening that was causing that viscosity of the white to go down. And I suggested to Mr. Peters that he check with the plant there to find out if there was any drop in his mash sales. Peters thought it was a good suggestion. And when he checked on three large poultrymen that they were servicing he found that their mash sales over a short period of time had dropped about forty percent. So Peters and I went out to these ranches. Peters took a few birds and opened them and found that their crop was filled with lawn clippings. It was then that we found that the Agriculture College at Pullman, Washington, had started about three or four weeks previous to that running broadcasts through the state, to the poultrymen, to cut their lawns and feed the clippings to the birds. Now, birds that are living on dry mash which start eating lawn clippings, they do not eat anything else but lawn clippings. It was reflected in the egg when that started. And eighteen of us—[3928] that is, three from the Lewis Feed and Egg Company, the fifteen Oliver men—we covered the state

(Testimony of E. F. Whitmore.)

of Washington during that period and held meetings with the poultrymen, that is, public meetings with the poultrymen, sent invitations out to them to attend, they brought their eggs, we broke them, candled them and broke them in these meeting places, and told them what was happening. They went back to their mash and quit the idea of feeding the lawn clippings.

The Court: The jurors may be excused until tomorrow morning at ten o'clock.

(Thereupon an adjournment was taken until tomorrow, Wednesday, April 3, 1946, at 10:00 o'clock a.m.) [3929]

Wednesday, April 3, 1946, 10:00 o'clock a.m.

The Clerk: United States v. Nye & Nissen.

The Court: Waive the roll call, stipulating and agreeing all the jurors are seated in the box. You may proceed.

E. F. WHITMORE,

recalled;

Direct Examination (resumed)

Mr. Faulkner: Your Honor, this counterpart that is in evidence as EH, this one marked, the counterpart, so I will put a mark on this to avoid confusion (indicating exhibit on the blackboard).

Q. Mr. Whitmore, at the conclusion of the session yesterday you had expressed an opinion and

(Testimony of E. F. Whitmore.)

had related instances of how you observed during the years the effect of diet upon the quality of eggs laid by chickens.

Now, Mr. Whitmore, in your opinion, the opinion, rather, than you expressed was that the quality of the eggs would be affected if a chicken's diet was not of the maximum kind.

A. That is correct.

Q. How does that affect the egg, in what particulars are the eggs of chickens that are not properly fed under the advanced methods that exist today, how does it affect the eggs?

A. Well, it affects the white, the viscosity of the white. [3930]

Q. Has that effect any relation to the keeping quality? A. Yes.

Q. I will withdraw that. A. Yes.

Q. At the time a chicken that has not been properly fed lays an egg will that egg at that time grade an AA notwithstanding imperfect feeding?

A. Let me have that again.

Mr. Faulkner: Will you read that?

(Question read.)

The Witness: A. It will, yes.

Mr. Faulkner: Q. What is the effect of diet upon the keeping quality of eggs?

A. Well, I will explain that in this way. You gather eggs from 100 to 150 different poultrymen. Each poultryman is different; the eggs from each poultryman will be different. We will say poultryman A is a good manager, he has good foundation

(Testimony of E. F. Whitmore.)

stock, he is very careful about his feeding, very careful about his gathering, and the handling of his eggs. Those eggs will go into a packing plant and will average 65 to 70 percent AA eggs when they are candled out. Now, we will take poultryman B. His foundation stock will not be as good as poultryman A's. He is not as good a manager, he does not give the care or attention to his feeding or the handling of his eggs. Those eggs will be graded out in a packing plant, they will still grade 65 to 70 percent AA. Now, coming back to poultryman A, the AA's in his packing will be all of the index value 1, where the second poultryman, [3931] the AA's in his case will be of the index value of 1½, or the third as shown on the Van Wagenen chart of broken-out eggs.

Q. Directing your attention to keeping qualities, in other words in the illustration you gave you have a quantity of eggs that came from one place, one rancher, and a quantity of eggs from another. The one who did not preserve a proper standard of feeding, what effect has that on the keeping quality of the eggs?

A. Well, your viscosity of white is not as strong, it is not as heavy as the chicken in the better foundation stock and the beter diet, and will deteriorate more rapidly, the white will thin out more rapidly, your deterioration will be greater.

Q. In the several grades of eggs as indicated in the regulations of the Department of Agriculture,

(Testimony of E. F. Whitmore.)

what type of egg AA, A, B, or C, is subject to deterioration faster?

A. Your AA egg will deteriorate more rapidly than any of the other grades.

Q. Mr. Whitmore, have you, in your experience, observed the rapidity with which eggs will drop from a higher grade to a lower grade?

A. Yes, I have seen eggs drop from AA a full grade overnight, many times.

Q. Have you contributed or participated in erecting or creating things in connection with the preservation of eggs to prevent or to retard the dropping of quality of eggs overnight, as you have expressed it?

A. As I stated yesterday, on one of [3932] my trips returning from New York, reading some of the authorities from the University of Missouri, they claim that a micro-organism will be retarded around 50 degrees. I recommended the construction of chilling plants in all the egg rooms, chilling rooms in the plant in San Francisco, which was done subsequently.

Q. In other words, at the plant of Nye & Nissen and other egg plants, they have chill rooms, is that correct?

A. I couldn't speak for other plants having chilling rooms. We have a chilling room in all our plants. I know there are chilling rooms in some of the plants in the East and the Middle West.

Q. Have you devoted an extensive period of time in observing the conditions of eggs when the

(Testimony of E. F. Whitmore.)

plant did not have these chilling rooms and these ice sections to preserve quality?.

A. Yes. I noticed the deterioration was more rapid due to the fact you run into various temperatures. Prior we would handle eggs, getting them into the warehouse, where it was as cool as possible, and then everything would be done to move those eggs into an iced car. We built that up also but we were not getting results from that, so we built the chilling box.

Q. When were the chilling boxes installed?

A. I think in 1928.

Q. Prior to that time in the plants that you had supervision over did you ever see in any plant, right in the egg plant, itself, the quality of eggs go down overnight?

A. Yes, many [3933] times.

Q. What would be the condition of that, what would cause that?.

A. On account of the warm—temperature of the candling rooms.

Q. What is the reason that a warm temperature or changes in temperature cause the deterioration in quality of eggs, why does that occur?

A. Well, heat has a very definite effect on the viscosity of the white, and it waters out, it thins out.

Q. What do you call heat?

A. 55, 60, 65 degrees. That is very probably or is due to the effect of micro-organisms that may penetrate a shell. Your heat develops and breaks down the viscosity of a white.

(Testimony of E. F. Whitmore.)

Q. It was testified here by a witness, Mr. Whitmore, that eggs can be successfully kept over a long period of time at a temperature, I think the temperature expressed was 58 degrees.

A. That could not be possible.

Q. Why?

A. Because your white would thin out, it would break down. An egg incubates at 68 degrees, and many authorities, or the authorities I have read and the bacteriologists, they give you a medium there of 50 degrees before the condition present will be retarded, and 132 degrees dipped in a liquid mix for six seconds to kill the micro-organism. Those authorities are from the University of Michigan and Missouri.

Q. Apart from the authorities of that nature, have you seen and observed over the years the result of keeping eggs in a temperature of in excess of 50 degrees?

A. I see it all the [3934] time. If they remain in that temperature any period of time——

Q. I mean you have actually seen eggs kept at that temperature and you have observed the effect of that temperature?

A. Yes. You take in a candling room, it will be around 60, there is a case of eggs in the candling room, you candle that and get it out of there. For example, if it remains in the candling room there where the temperature is 60 overnight, definitely there is a drop in quality.

Q. In the plants of Nye & Nissen on Townsend

(Testimony of E. A. Whitmore.)

Street, or the Missouri Street plant, in the years of 1938 to 1940, did you participate in the installation of a practice relative to the immediate determination of the quality of eggs after they came into your plant?

A. I often inspected a lot of eggs. I would say I did with all eggs——

Q. No. Did you participate in laying down a policy that quality of eggs will be determined as soon as they come into the plant, unless they had already been candled and graded in one of your own plants elsewhere?

A. Yes, that was the policy in all our plants.

Q. Was that at your suggestion? A. Yes.

Q. Why was that.

A. To preserve the quality as we got them in, to preserve them, to preserve the original quality from the time they were candled.

Q. Did the firm of Nye & Nissen have a practice in relation to the bringing in of eggs into their San Francisco plant in the [3935] years 1938 to 1944 where there was a prospect of having—withdraw that. In the years 1938 to 1944 did you have any practice, did you initiate, did you, yourself, suggest, or initiate any practice in respect to having eggs inspected by the Department of Agriculture as soon as possible after they came into your plant?

A. Well, that was a general policy.

Q. Why was that?

A. Say you would have a grade, you had a

(Testimony of E. F. Whitmore.)

particular grade of eggs, you would know what they were going to be, so they should be moved to expedite handling of eggs and keeping the quality, move them out as rapidly as possible after they were inspected.

Q. Mr. Whitmore, assume that a quantity of eggs had left the plant of Nye & Nissen on a particular day, and had been transported on a truck from that plant and taken down to a pier on the San Francisco waterfront in the month of April or May; they remain on the pier for period of time which is not fully disclosed here, but after remaining on the pier for sometime they were then, that quantity of cases of eggs were then placed aboard a vessel, either upon the deck, in a gangway, or in a chill box; assume further after a period of time of from two days to as long as eight days elapsed, that those eggs were inspected by a Veterinary Corps inspector or Government inspector, or a grader of eggs, and a conclusion was reached as to the quality of those eggs at that inspection; assume, if you will, Mr. Whitmore, that that was a conclusion wherein [3936] an attempt was made to arrive at an honest and just conclusion of the grading by a particular man. Would that conclusion, in your opinion, indicate the quality of the eggs at the time they left the plant of Nye & Nissen on Seventeenth and Missouri Streets? A. No, sir, it could not.

Q. Why?

A. Well, there are three fundamental factors

(Testimony of E. F. Whitmore.)

involved. They would change the quality from the time they were delivered, or left the plant, up until the second inspection at the dock—

Q. All these inspections are on shipboard?

A. Well, on shipboard. First we may take the differential in opinion of the graders. I think the Army recognizes about 10 percent.

Q. What do you mean, 10 percent?

A. Well, different people, at a given point—at a given point where one grader would grade the next grader may grade five percent lower or five percent higher. In other words, there is a split of 5 percent. I think it is greater than that. My experience would be around 14 percent, and in some cases I have seen it run 14 percent one way. We take that into consideration to start with. The care and handling of the eggs is one of the largest factors. In an egg, itself, we have a living organism to start with. Nature has provided a shell to protect that egg meat and protect the embryo in time of development. On those shells it has provided a certain number of pores, or pores in the shell for respiration by the embryo during its period of development. [3927] The same pores that allow respiration of the embryo allow the moisture from the egg or the water in the white and yolk to dehydrate, shrink or diminish, whatever term you wish to use, and it will also allow the entrance of micro-organisms through the shells, through these pores. New-laid eggs as they drop from the chicken are practically free from any

(Testimony of E. F. Whitmore.)

terorganismic and the authorities and bacteriologist have made examinations and have concluded that from the time that egg leaves the chicken up until the time it is consumed the rapidity and care that is taken in handling that egg covers how that egg will be, what quality that egg will be up to the time of its consumption. But take an egg that is picked up by a truck at Nye & Nissen's plant, or any plant, and it is carried around two blocks, ten blocks, fifteen blocks, it goes down in the truck and is unloaded on the dock. As a matter of fact, there are instances when it will be there one, two, or three days. Then it is put on a sling, put in the boat. I can say an egg from a sudden jar like that can break from an AA to a Standard, a sudden jar, because loading a lot of eggs on the dock, a sudden jar would result in the breaking down of AA's to A's, and, as I say, to Standards. There isn't any question about that. Those are unloaded in a corridor or room downstairs. Temperatures vary. The temperature may vary from 50 to 60 to 70 degrees. If they receive a sudden jar in handling the eggs down there there would be a [3938] definite deterioration from the AA quality down to a B, some will be B.

Q. In connection with the determination at the last point of inspection, not the question of the type of inspection, but in respect to giving attention to the fact that these various classes of eggs, AA, A, B, C, are from an actuality divided in reality into nine different classe; does that enter into it?

(Testimony of E. F. Whitmore.)

A. I should very much like to look into it unless it is inspected by some inspector who, besides just grading, would follow the various inspections of those gradings.

Q. In addition to the fact, as stated, that you have indicated, it is your testimony, is it, Mr. Whitmore, isn't it, that particular eggs seen or observed by the inspectors at the different places

A. I did not hear that.

Q. In other words, in connection with determining whether a determination of quality at point B, which is several days later, of a week, or eight days later that at point A, where the inspection is upon the selection of samples, will the grading of eggs vary, depending on the samples taken?

A. Yes. Inspector A, say, would come in and he would draw, say, five percent of these cases. He candles 100 eggs out of a case and arrives at an opinion. Inspector B will take five cases of eggs and he will undoubtedly draw five different cases of eggs. The cases of eggs that he draws would undoubtedly not be the same eggs that Inspector A draws, and each case in the [3939] lot he would draw would—for each case there very likely would be a different candler and a case of eggs would represent, we will say, the personality of the girl and her ability and her conscientiousness of grading these eggs according to the way she is taught. There will be a variation there. Consequently, from one inspection to another the eggs would be different.

Q. In the matter of packing eggs in the plant

(Testimony of E. F. Whitmore.)

of Nye & Nissen, when the eggs are packed and labeled, that is, with the paper label, what type of label is placed on the case to indicate a medium egg? A. A green label.

Q. What type of label is placed on a case to indicate a small eggs? A. Black.

Q. What type of label is placed on a case to indicate a large egg?

A. It could be either a blue or a red.

Q. What does the letter "P" stand for upon a label, as you have seen and observed it, from your experience in connection with the firm of Nye & Nissen?

A. The only time that I know that it was used, a "P", is where they have been packing some naturals and some processed and they put the "P" on when they are processed. [3940]

Q. Mr. Whitmore, has the dehydration that you have referred to an effect on the weight of the eggs?

A. Yes, it will affect the weight of an egg. A lot of times in the candling room where girls are candling eggs they will throw an egg on a scale which is in balance. When we call a balance egg if it is a 24 ounce egg, a 23 ounce egg, or whatever it may be; if it is 23 ounces, and it just balances there, you take that egg for that grade. That would be a Large egg, we will say. Well, the evaporation could take place within a day or two where it would lose enough weight that the egg would not balance on the second weighing. Consequently it

(Testimony of E. F. Whitmore.)

would be graded down to a lower grade. That often happens.

Q. As I understood from your testimony yesterday you have installed the chill boxes in the plants of Nye & Nissen and in connection with the present plant of Nye & Nissen. In addition to chill boxes you have storage facilities similar to a large storage plant, isn't that correct?

A. That is correct.

Q. Was that designed by you?

A. Yes, sir.

Q. Have you observed the effect of refrigeration upon eggs under various conditions?

A. Well, you——

Q. I want to know if you have observed the effect of refrigeration, Mr. Whitmore?

A. Oh, yes, a lot of times, sure. [3941]

Q. That has been a substantial part of your work?

A. Yes, sir. Most of my work is refrigeration work.

Q. In the course of your work, either in respect to the handling of plants and the candling and grading of eggs and in connection with refrigeration, have you become familiar with the subject matter of moisture accumulating on eggs and mold or whiskers forming on them?

A. Yes, I am very well acquainted with those conditions.

Q. Have you observed eggs in refrigeration on trains, ships, chill rooms and storage plants?

(Testimony of E. F. Whitmore.)

A. Not on trains. Of course you have your refrigerator cars on trains. I have observed it on some of the supply ships."

Q. I mean you have observed it on refrigerator cars? A. That is right.

Q. That is what I meant by train. Supply ships? A. What is that?

Q. I say when I use the word "train" I mean an express train with refrigerators cars.

A. Yes, refrigerator cars.

Q. What relation has moisture in refrigeration upon the formation of mold?

A. Well, I have seen mold develop within a 48-hour period on eggs due to moisture and warm air, warm currents of air.

Q. What causese that?

A. Well, it is the mold spores that develop from the heat and moisture. I am not a bacteriologist, but that is the only conclusion that I can come to, and [3942] I presume that that is correct.

Q. Now, then, when the mold forms on the outside of an egg what does it then do? Does it remain there or does it penetrate the shell.

A. It will penetrate the shell. It will eventually penetrate the shell and it will form a black spot within the egg, usually between the inner membrane of the shell and the shell itself. That can develop. It all depends how large that spore, that development is. Sometimes it does not enter into the white and sometimes the white will form a little gelatinous condition around that spot and it is considered a moldy egg.

(Testimony of E. F. Whitmore.)

Q. If the mold penetrates the shell, the resultant effect inside is called what?

A. A moldy egg, most of the inspectors call it. I call it a spot egg, a black spot.

Q. Mr. Whitmore, assume that there is any particular quantity of eggs and they are graded either by the Veterinary Corps or by the Department of Agriculture or yourself. The method is to take samples from that case and determine the percentage of AA's, A's, B's, C's, and various types, is that correct?

A. That is right, if you are inspecting for a sale, Extras or whatever it may be, it is usually and 80 percent grade that the sale is made on.

Q. Assume that your conclusions were that there were 81 percent or any passing figure for a particular grade—say the particular grade A or AA egg. I will ask you if at the time [3943] that that case was packed in the normal every day operations in the various plants of Nye & Nissen over which you had supervision, whether at the time the candlers packed them they selected 80 percent AA's and put in a AA box those eggs, or whether every egg that went in that box at the time of candling is supposed to be the judgment or experience of that candler that it is a AA?

A. Yes, it is the judgment and the experience of that candler that it is supposed to be a AA. In other words, you train your candlers to try to get or to put 360 eggs in that case that will grade the given grade that she is working on—AA, A, or

(Testimony of E. F. Whitmore.)

whatever it may be. On inspections I always demanded a 90 percent. If I took a case of eggs from one of the benches and candled it and it did not run 90 percent, I would take it back to the candler, stand there, and have her rework it. In the case of AA's I would not allow one egg considered a B that I wouldn't take back. If there was one egg in the case I would take that one egg back. But if there was 10 percent of A's in that case of AA's I would never say anything to her. It would be too confusing. It may throw her off.

Q. That is the method of candling in the plant of Nye & Nissen in Santa Cruz, Petaluma, Utah—

A. That was the method I adopted and installed and the local inspectors tried to follow it through. I checked on them quite frequently. [3944]

Q. Do you know, Mr. Whitmore, whether that is generally the method followed in candling plants for other large organizations?

A. I believe it is, yes.

Q. When that is so, Mr. Whitmore, what is the reason for permitting, for instance, a tolerance of 20 percent in the case where it is packed?

A. The tolerance of 20 percent is undoubtedly allowed due to the fact that you have the human element involved there, the individual herself, and there will be a difference in opinions of the candles, and that tolerance is allowed for that purpose, to offset it. That is one reason I always work for a 90 percent because that will give a 10 percent tolerance for the next fellow.

(Testimony of E. F. Whitmore.)

Q. Has that tolerance any connection with the recognition that eggs will depreciate from time to time?

A. After they are inspected?

Q. No, no, between the time they are candled and the time that they are inspected, that in that interval there will be deterioration in the grade that they were originally graded at?

A. Well, yes, I presume that it is one reason that you try to pack a perfect case of eggs at the time of packing.

Q. You indicated a moment ago, Mr. Whitmore, you have observed mold to form in refrigeration on the outside of an egg in a period, I think you said, of——

A. Forty-eight hours, two days. [3945]

Q. Forty-eight hours. Have you ever observed the rapidity with which the contamination caused by that mold will enter the shell?

A. Oh, I would say little black spots would form within three, four or five days, but a moldy egg, if a mold shows on the outside, it is considered an inedible eggs, and that mold can develop from the time it is put in some of the so-called chill boxes up to the time it is used, and if may be only two or three days due to the heat in the box, due to the moisture in the box, and the mold spores will develop.

I had occasion to look in a box in 1944 where I could scrape the molds off the walls with my hand. They had a circulating fan at the end of

(Testimony of E. F. Whitmore.)

the room that had so much mold on the blades you could not see the brass on the fan, with a temperature running from 55 to 60.

Q. What effect would that have on the mold?

A. Your spores would start developing immediately.

Mr. Faulkner: That is all.

Mr. Pratt: No cross-examination.

The Court: Step down.

JOHN J. SMITH,

called on behalf of defendants; sworn.

The Clerk: Q. Will you state your name?

A. John J. Smith. [3946]

Direct Examination

Mr. Faulkner: Q. Mr. Smith, are you an officer of the firm of Nye & Nissen?

A. Yes, I am the vice-president.

Q. Where do you live?

A. I live at 1258 23rd Avenue, San Francisco.

Q. Are you married? A. I am married.

Q. Have you a family?

A. I have two children, boy and girl.

Q. Have you lived here all your life?

A. All my life; been born and raised here.

Q. During the years 1938 to 1944, and for many years prior to that, as a matter of fact, were you the the vice president of the firm of Nye & Nissen?

(Testimony of John J. Smith.)

A. Yes, I was.

Q. I direct your attention, Mr. Smith, to a period from 1938 to 1941. Where was the office of the firm of Nye & Nissen during that period?

A. In 1938 we were at 324 Townsend Street.

Q. And where were you in 1942?

A. We moved to 17th and Missouri in October of 1942.

Q. Mr. Smith, in the premises of 324 Townsend Street they run from Townsend Street to Bluxome Street? A. That is correct.

Q. Do you remember the distance, the length of those premises?

A. Yes, it is 222 feet in length by about 50 feet in width.

Q. In the premises on Townsend Street there were chill boxes, [3947] butter rooms, and various facilities on the ground floor for the handling of eggs, is that correct? A. That is correct.

Q. Upstairs or on the mezzanine, without going into any detail, there was the office?

A. There was an office, yes.

Q. Is there an office there which you and Mr. Moncharsh shared? A. Together.

Q. In relation to the business of the firm, Mr. Smith, in the years 1938 to 1942 when you were down on Townsend Street and after you left Townsend Street, would you indicate briefly the division of work between you and Mr. Moncharsh in relation to the firm of Nye & Nissen? What generally

(Testimony of John J. Smith.)

and briefly was the field that Mr. Moncharsh devoted himself to?

A. Mr. Moncharsh was the executive of the organization. We have various plants throughout the country that were all under his supervision. I acted in the capacity of a sales manager—steamship companies, Army, Navy, civilians, grocery stores, and so forth.

Q. Who handled the financing for the company?

A. Mr. Moncharsh. That was under his jurisdiction.

Q. And who handled the matter of securing supplies, boxes and cartons?

A. Mr. Moncharsh did all of that.

Q. Your business was devoted primarily, was it not, to the sale of eggs, butter and cheese, is that correct?

A. Butter and eggs presently, yes. The cheese is a very small item. [3948]

Q. And then you had other items of poultry, and so on?

A. Yes, surely. Just a small amount.

Q. Directing your attention particularly to the eggs and the butter, where was the most substantial part of the deliveries of eggs made from?

A. Well, most of our sales—I would say, 80 percent of them—went direct from our packing plants.

Q. And where were they located?

A. Well, Petaluma, Santa Cruz, three plants in

(Testimony of John J. Smith.)

the state of Utah, and two plants in the state of Washington.

Q. Commencing in the year 1938 and the years 1939 and 1940, what was the general method of entering into an agreement with the Army to supply them eggs? A. It was all on bid.

Q. And if a bid was awarded you received a purchase order, is that correct?

A. That is correct.

Q. Was that part of your field of duty, Mr. Smith?

A. Yes, I usually took care of the bids, the proposals that came in. Mr. Moncharsh and I would discuss it, we would arrive at a price, I would fill it out and see that they got to the proper place.

Q. In connection with filling orders to the Army under those bids would the eggs that would be covered by a purchase order awarded as a result of a bid all be delivered in one quantity at one particular place?

A. No. Some base, yes, and other bids, for posts and camps, and like that, it would [3949] be deliveries over a month's period.

Q. Where did the inspection occur that determined whether or not the Army would accept the merchandise?

A. The inspection—we had inspections in our plant, but the final inspection was always at the point of delivery.

Q. And uniformly during the years when you